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Counterstatement of the Case

This case presents the question of whether or not a faction of a local parish, a parish which is admittedly a constituent part of a hierarchal church organization, can repudiate the ecclesiastical decisions of the hierarchal organization of which it is a part. The parish is the Serbian Eastern Orthodox Congregation of St. George located in Elizabeth, New Jersey which was a part of the American-Canadian Diocese of the Serbian Orthodox Church. Both parties admit that the St. George parish is a constituent part of the Serbian Orthodox Church, the spiritual head of which is the Serbian Patriarch, headquartered at Belgrade, Yugoslavia. The attorney for the petitioners admitted in his opening statement that the petitioners "still recognize the Patriarchate as being the spiritual and hierarchal authority in the Church."

The present controversy arose from two decisions taken by the Serbian Orthodox authorities in Belgrade in May, 1963. The first decision concerned Bishop Dionisijie who had been the head of the American-Canadian Diocese of the Serbian Orthodox Church. On May 10, 1963 the Holy Synod in Belgrade suspended him from all priestly functions and relieved him as the head of the diocese pending resolution of charges brought against him. The second decision by the Holy Assembly of Bishops realigned the initial American-Canadian Diocese into three dioceses.

Dionisijie later was discharged as Bishop and defrocked and stripped of all ecclesiastical functions. He has refused to recognize this defrockment and has sought to establish an "autonomous" schismatic diocese.

The present case involving the St. George Congregation concerns petitioners attempt to align the St. George congregation with Dionisijie.

Counterstatement Of The Case

The allegiance of the petitioners to Dionisijie is demonstrated in several ways, such as their refusal to admit the validity of the defrockment of Dionisijie (see petitioners answer to respondent's complaint) and their acknowledgement that they recognize him as their bishop evidenced by the opening statement of the attorney for the petitioners before the Trial Court. However, their allegiance to Dionisijie is more apparent from the actions taken by the petitioners in their attempt to control the St. George Congregation.

On June 16th, after the congregation became aware of the decisions taken by the Holy Synod in May of 1963, a resolution engineered by the petitioner Nikitovich was passed stating that the St. George Church refused to be "subject to decisions which are inspired by the communist Government in Yugoslavia which wishes to achieve our partition and to weaken our church."

Dionisijie, despite his suspension, held a Sabor (council) in August, 1963 which petitioners from the St. George Church attended. The Sabor refused to recognize the division of the diocese and the suspension of Dionisijie and refused to recognize the appointment of the three bishops to the realigned American-Canadian Diocese by the Holy Synod. Dionisijie reconvened the Sabor in November, 1963 after Belgrade had refused to recognize the validity of the August, 1963 Sabor and at this time Dionisijie established the so-called "autonomy" of his diocese.

The respondents who wished to stay within the Serbian Orthodox Church met with Bishop Stefan, the head of the Mid-Eastern Diocese, on August 17, 1964. The petitioners, who at that time were in control of the executive committee of the church, excluded the respondents from membership in the church because they deemed the meeting

with Bishop Stefan a rejection of the June 16, 1963 resolution. The Executive Committee met on August 23, 1964 and the minutes indicate the allegiance of the petitioners to Dionisijie. These minutes state in part as follows:

"Said Resolution was sent to the Diocese, to Libertyville, Illinois, and the priest of the St. George Church and two delegates of our Congregation took part in the work of the legal Tenth Serbian National Diocesan Assembly, held in August and November, 1963, in Libertyville, Illinois where useful Decisions were adopted, to the rendering of which our Congregation has participated and which our Congregation is under a duty to respect and follow.

Despite such a clear Resolution, and despite the clear Decisions of the Tenth Serbian National Diocesan Assembly, at which also our congregation took a part through its Delegates, and pursuant to which decisions our Congregation remained within the frame of the Serbian Eastern Orthodox Diocese in the United States of America and Canada, and under the latter jurisdiction the excluded member of our Congregation have acted, already from a certain time, against our legal Diocese to the detriment of our Church. Acting in conjunction with the representatives of the newly organized Diocese for the Middle West, East, and Canada, they rendered themselves guilty toward their church and the Diocese, under the jurisdiction of which their high mark, when in the evening of August 17, 1964 they secretly convened in Elizabeth at Hotel Carteret with Stefan Lastavica, former Archpriest from Windsor, Ontario, and now Bishop of the Middle West, East, and Canada, with Archpriest Dusan Klipa from Clariton, Penn., the 'Arhijerejski Namesnik' for the same Diocese, known to all. At this meeting they conspired with the aforesaid Lastavica and Klipa how to take over the Church of St. George and place it under the Jurisdiction of Lastavica's Diocese.

Such an activity of the aforesaid persons is an activity against our Diocese and Church" (ex. PW 20,946a at P. 2).

Counterstatement Of The Case

In February, 1965 the petitioners in order to solidify their position, amended the by-laws of the St. George Church to provide that no one could be a member of the St. George Church who did not recognize the jurisdiction of Dionisijie's Diocese (Ex. PR 7, 103a-Art. 9e).

Meanwhile the defrocked Dionisijie was seeking support throughout the world for his "automonous" schismatic diocese. He unsucessfully approached both the Patriarch of Constantinople and the Russian Orthodox Church for recognition. When it became apparent that Dionisijie was trying to establish an independent church, the heads of the three dioceses in the United States issued a proclamation on November 24, 1966 (a copy of which was sent to the Committee of Unity representing the St. George Congregation) stating that any person supporting Dionisijie was considered to having seceeded from the Serbian Orthodox Church and therefore lost his "status and all rights and privileges in the Serbian Orthodox Church" (Petitioner Appendix E, P34a). On January 29, 1965, seventeen persons were appointed by Bishop Stefan to whom respondents owe allegiance to conduct the affairs of the St. George parish until "normal church life and activities of their congregation are brought about."

Thereafter suit was started by both sides and the cases were consolidated for trial. The matter was decided in favor of respondents by the Trial Court (see Petitioners Appendix B; and P.3a et seq.). This judgment was upheld by the Appellate Division of the New Jersey Superior Court (See Petitioners' Appendix C, P.28a et seq). The New Jersey Supreme Court thereafter denied Petitioners' petition for certification (See Petitioners Appendix D P.33a).

Argument

Objections To Granting Writ Of Certiorari

Point I

There is no federal question presented.

The Statement of facts indicates that the primary reason for dispute which developed in the St. George Church arose out of the petitioners refusal to accept the decision by higher church authorities removing Donisijie as Bishop of the American-Canadian Diocese. The most noticeable examples of this are the minutes of the meeting of August 23, 1964 wherein the respondents were barred from activity in the church because of their failure to accept the decisions of the two Sabors which sought to set aside the decision suspending Dionisijie and the altering of the by-laws by the petitioners after the removal of the respondents to provide that no person would be a member of the St. George Church who did not recognize the jurisdiction of Dionisijie's diocese. Closely connected with the petitioners refusal to accept the suspension of Dionisijie was petitioners refusal to accept the realignment of the one diocese into three dioceses. The New Jersey Trial Court recognized the actions of the petitioners for what they are—an attempt to override decisions of the hierarchy on religious matters. The Trial Court quoted with approval the following language from the decision in the case of *Serbian Orthodox Church Congregation of St. Demetrius v. Keleman et al.*, (decided by the Court of Common Pleas of Summit County, Ohio, 1966):

> "Plaintiff and those in sympathy with them are rebelling against the patriarchy and are following the former Bishop who is not a

Argument

Bishop and are considering themselves a part of a church which is not a part of the orthodox church system and not a part of the eastern orthodox church. Consequently the evidence in this case identifies the defendants and those in association with them as the successors to the church and who maintain and profess its submission to the Serbian Eastern Orthodox Church."

The Appellate Court also recognized that the "basic conclusions of the trial judge rest . . . upon the recognition of decisions made by the highest authority of the mother church of which the church of St. George was a constituent part from the time of its organization." It must also be recognized that the petitioners do not contest the fact that the St. George Church is a constitutent part of the Serbian Orthodox Church and make no attempt to attack this affiliation.

In this background it is evident that this petition is based primarily upon an incorrect reading of the recent case of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 21 L. Ed. 2d 658 (1969). The United States Supreme Court decision was announced after the Trial Court's decision but before the Appellate Court's decision. The Appellate Court, therefore, had an opportunity to consider the case of the *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* as well as the leading case of *Watson v. Jones,* 13 Wall 679, 80 U.S. 679, 20 L. Ed. 666 (1872). The New Jersey Appellate Court found that under the *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* that it "may not on this appeal review the validity of the action of the

Holy Assembly of Bishops acting under the authority of Article 16 of the Constitution of the Mother Church in sub-dividing the old diocese".

The decision of the Trial Court and subsequent affirmance by the New Jersey Appellate Division was in accordance with the principles established in the *Hull Church* decision. In essence, the Trial Court found for the respondents because it did not want to interfere in a controversy over religious doctrine and practice; namely, whether the decisions of the Serbian Orthodox Church concerning the realignment of one of its dioceses and the suspension of its bishop were proper ones.

The case presented three interrelated questions:

1. Whether the Court will review the ecclesiastical decisions concerning the defrockment of Dionisijie and the realignment of the former diocese into three dioceses.

2. Whether the facts support the finding that the petitioners are followers of a defrocked bishop.

3. If the facts support a finding of allegiance by the petitioners to a defrocked bishop, does this allegiance mean exclusion from the St. George Congregation.

The problem is that the petitioners are dealing with the third issue and the *Hull Church* case dealt with the first issue. For the petitioners position to be sustained the Court would have to make a determination on the first issue and find that the realignment and the defrockment of Dionisijie were improper. This, of course, is exactly what the Court said it would not do in the *Hull Church* case because "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."

Argument

It is the petitioners who are seeking the resolution by the courts of ecclesiastical questions. The petitioners contend that the decisions of the New Jersey courts violate the *Presbyterian Church vs. Hull Church* decision because they are based on a "determination of who is a lawful member of the Church and who is not a lawful member of the Church." This clearly is not the situation. The Trial Court stated in its decision that "nothing found in this opinion should be read by the successful litigants as a justification for excluding anyone from the Congregation of St. George, who if he qualifies from a religious point of view, is willing to accept the new diocese, its bishop and its position as a part of the Serbian Orthodox Patriarchate". The Trial Court found that this is not disputed by the petitioners that the St. George Church is a constituent part of the Serbian Orthodox Patriarchate and there is nothing unusual for a Court to rule that a congregation should only have as its members those persons who follow the Serbian Orthodox Church. All that the respondents think is that the St. George Church consists of members in good standing of hte Serbian Orthodox Church in accordance with the principles under which it was founded. The petitioners have not shown the slightest disposition to abandon their challenge to the Serbian Orthodox Church and there is nothing that prohibits them from membership if, in fact, they do subscribe to the principles of the Serbian Orthodox Church. The *Hull Church* decision clearly is in accordance with these principles.

CONCLUSION

The question presented in this appeal by petitioners is insubstantial and fails to raise nor does their brief demonstrate a question of such public importance as to merit the attention of this Court nor call for the extraordinary granting of a Writ of Certiorari. For the foregoing reasons it is respectfully urged that this Court decline to issue the writ sought by the petitioners.

Respectfully submitted,

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